IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6811 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J B VIDHYALAYA

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 6811 of 1999

MR BN PATEL for Petitioner.

Mr. L.R. Poojari, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 24/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr. B.N. Patel for the petitioner and Mr. Poojari, learned AGP for the respondents. In the present Special Civil Application, the petitioner has challenged order dated 20.5.97/27.10.97 passed by respondent No.2 Commissioner for Higher Education, and also communication/order dated 31.7.99 of respondent No.3 rejecting the appeal of the petitioner against the order dated 20.5.97/27.10.97. The

facts leading to the present Special Civil Application are as under.

2. The petitioner-trust is running a Secondary and Higher Secondary School and is entitled to the grant from the respondents as per the provisions of Grant-in-Aid Code, 1964 as applicable to the Secondary and Higher Secondary Schools in the State of Gujarat. By order dated 31.12.1994 the respondent No.1 District Education Officer, Patan/Mehsana, disallowed certain expenses totalling to Rs. 67,620/= incurred for the years 1981-82 to 1983-84. It seems that the said amount was disallowed pursuant to audit objection and the respondent No.1 ordered recovery of the said amount which included grant-cut of miscellaneous expenses totalling to RS. 35,048.45 ps. pertaining to years 1981-82 to 1983-84.

3. Being aggrieved and dissatisfied with the order passed by respondent No.1 District Education Officer disallowing the expenses totalling to Rs. 67,620/= and order with regard to recovery, the petitioner-trust preferred appeal before the respondent No.2, i.e., Commissioner of Higher Education. The respondent No.2 by his order dated 20th May 1997 decided the appeal of the petitioner and passed an order to the effect that the miscellaneous expenses totalling to Rs. 35,048.45 ps. incurred in the years 1981-82 to 1983-84 are allowed and objections to appointment of two teachers, namely (1) Mr. AA Gosai and (2) Mr. DM Patel are waived but in the said orderr as far as waiver of objections to appointment of teachers are concerned, they are made subject to grant-cut of miscellaneous expenses of the years 1996 and 1997 at 7% and 4% respectively, whereas the miscellaneous expenses which were allowed for the years from 1981-82 to 1983-84 were held to be made without following the procedure prescribed by the department and hence grant-cut at 25% of the admissible grant for miscellaneous expenses for the years 1996 and 1997 was made.

4. Being aggrieved and dissatisfied with the said order passed by the respondent No.2 dated 20.5.97/27.10.97, the petitioner-trust had preferred a detailed appeal before the State Government on 21.11.1997. The respondent No.3 in a most casual manner by order dated 31.7.1999 passed an order rejecting the appeal preferred by the petitioner-trust. From the bare reading of the order dated 31.7.1999 it appears that no reasons are assigned by the respondent No.3 for rejecting the appeal preferred by the petitioner-trust. In the said order dated 31.7.1999 even the submissions of the

petitioner-trust are also not recorded.

5. Being aggrieved and dissatisfied with the aforesaid orders, the petitioner-trust has preferred the present Special Civil Application. This Court (Coram: M.S. Shah, J.) passed the following order on 24th September 1999.

> "RULE. Notice as to interim relief returnable on 25.10.1999. Till then the respondents shall not recover/deduct the grant on the basis of the objections to the appointment of teachers made in the year 1981-82 to 1983-84. As regards deduction of grant in respect of purchase of material, respondents will be at liberty to apply 25% grant cut in respect of the cost of the materials purchased in the years 1982-83 and 1983-84. This ad interim relief is passed without prejudice to the rights and contentions of the parties."

6. Today, when the matter is called out, learned advocate appearing for the petitioner, Mr.B.N. Patel has submitted that the order dated 31.7.1999 passed by the appellate authority respondent No.3 rejecting the appeal preferred by the petitioner-trust is passed without hearing the petitioner-trust and without assigning any reasons and the same is a non-speaking order. So, he requested that the said order be quashed and set aside. On the other hand, Mr. Poojari, learned AGP appearing on behalf of the respondents has stated that the respondent No.3 has considered the submissions made on behalf of the petitioner-trust and has passed the said order, and therefore it cannot be said that there is non-application of mind on the part of respondent No.3. I have considered the arguments canvassed on behalf of the petitioner as well as the respondents. I have also gone through the order dated 31.7.1999. The present Special Civil Application is required to be allowed only on the ground that the order dated 31.7.1999 is passed without giving an opportunity of being heard to the petitioner-trust and the same is a non-speaking order. From the order dated 31.7.1999, it is crystal clear that no reasons are assigned by the respondent No.3 for rejecting the appeal preferred by the petitioner-trust and even the submissions made on behalf of the petitioner-trust are also not referred in the said order dated 31.7.1999.

7. Under the circumstances, the order dated 31.7.1999 rejecting the appeal preferred by the petitioner-trust is required to be quashed and set aside. The same is hereby quashed and set aside. The matter is remanded to the respondent No.3 for deciding the appeal afresh within a period of 8 weeks from the date of receipt of writ of this Court, after giving opportunity of hearing to the petitioner-trust. The interim order dated 24.9.1999 passed by this Court, granting interim relief to the effect that the respondents shall not recover/deduct the grant on the basis of the objections to the appointment of teachers made in the year 1981-82 to 1983-84, shall be continued till the appeal is decided and disposed of by the respondent No.3, as stated hereinabove. So far as further interim relief granted by this Court on 24.9.1999 to the effect that 'As regards deduction of grant in respect of purchase of material, respondents will be at liberty to apply 25% grant cut in respect of the cost of the materials purchased in the years 1982-83 and 1983-84', the said liberty is reserved without prejudice to the rights and contentions of the parties. Mr. Patel is not in a position to point out whether the 25% grant-cut is effected or not. However,if the 25% grant-cut is effected, then that will be subject to ultimate outcome of decision on the appeal which is to be decided by the respondent No.3.

8. Rule is made absolute to the aforesaid extent. The interim relief stands vacated, subject to the

aforesaid observations. The Special Civil Application stands disposed of accordingly with no order as to costs.

[M.R. Shah, J.]
rmr.